

DEC 30 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FARON WADE JONES,

Defendant - Appellant.

No. 03-30078

D.C. No. CR-02-00023-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Argued and Submitted December 2, 2003
Seattle, Washington

Before: BRUNETTI, T.G. NELSON, and GRABER, Circuit Judges.

Faron Wade Jones appeals his convictions for abusive sexual contact in violation of 18 U.S.C. §§ 1153 and 2244(a)(2) and attempted sexual abuse in violation of 18 U.S.C. § 2242(2). We have jurisdiction pursuant to 28 U.S.C.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

§ 1291, and we affirm. Jones also appeals the district court’s refusal to provide written jury instructions. We address that argument in a companion published opinion. Because the facts are familiar to the parties, we do not recite them here.

We conclude that there was sufficient evidence to support Jones’ convictions.¹ “[V]iewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”² Sufficient evidence exists in the record, including Jones’ own admissions regarding his activities, to support the findings that Jones’ victim was incapacitated and that Jones was aware of her incapacitation.³

The district court permissibly excluded evidence of DNA found on the victim’s neck as cumulative.⁴ The probative value of the evidence was

¹ We review claims of insufficient evidence *de novo*. See *United States v. Odom*, 329 F.3d 1032, 1034 (9th Cir. 2003).

² *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis omitted).

³ See 18 U.S.C. § 2242 (1994); 18 U.S.C. § 2244(a) (1998). Jones does not dispute that the Government produced sufficient evidence of the remaining elements of the charges brought against him.

⁴ We review the trial court’s decision to exclude evidence for an abuse of discretion, according considerable deference to the trial court’s evidentiary ruling. See *United States v. Gonzalez-Torres*, 309 F.3d 594, 601 (9th Cir. 2002), *cert denied*, 123 S. Ct. 1768 (2003); *United States v. Cordoba*, 194 F.3d 1053, 1063

(continued...)

“substantially outweighed by . . . considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”⁵ Sufficient evidence of witness Marvin Birthmark’s potential bias against Jones already existed on the record. Therefore, the excluded evidence “would not have added significantly to the inference of bias that one could have drawn” from the evidence already presented.⁶

AFFIRMED.

⁴(...continued)
(9th Cir. 1999).

⁵ FED. R. EVID. 403.

⁶ *United States v. Smith*, 196 F.3d 1034, 1038 (9th Cir. 1999).